

**UNITED STATES DISTRICT COURT**

**WESTERN DISTRICT OF LOUISIANA**

**TANYA CONSTANTINE**

**\* CIVIL NO. 6:09-2224**

**VERSUS**

**\* JUDGE MELANCON**

**CITY OF KAPLAN, ET AL.**

**\* MAGISTRATE JUDGE HILL**

**REPORT AND RECOMMENDATION**

Before the court is the Motion to Dismiss filed by Chase Benandi (“Benandi”) and Rustin Comeaux (“Comeaux”). [rec. doc. 6]. By this Motion, Benandi and Comeaux move that they be dismissed from this action with prejudice on grounds of insufficiency of citation and service of process and prescription. Plaintiff has not filed Opposition to the Motion. Moreover, during the February 17, 2010 hearing on the Motion, counsel for the plaintiff, Gabe Anthony Duhon, advised that the plaintiff has no Opposition to the grant of the Motion to Dismiss, and further, that plaintiff does not oppose dismissal of Benandi and Comeaux **with prejudice** from this action. Accordingly;

**IT IS RECOMMENDED** that the Motion to Dismiss filed by Chase Benandi (“Benandi”) and Rustin Comeaux (“Comeaux”) [rec. doc. 6] be **GRANTED**, and accordingly, Chase Benandi and Rustin Comeaux be **DISMISSED WITH PREJUDICE** from this action .

**Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this report and recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P 6(b), shall bar an aggrieved party from attacking either the factual findings**

**or the legal conclusions accepted by the district court, except upon grounds of plain error.**

**Douglass v. United Services Automobile Association, 79 F.3d. 1415 (5th Cir. 1996).**

Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

Signed this 18<sup>th</sup> day of February, 2010, at Lafayette, Louisiana.

  
C. MICHAEL HILL  
UNITED STATES MAGISTRATE JUDGE